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EXAMINER

WAY, JAMES R

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PETER WEIGAND, GUNTER QUASS, and
JENS VON WAADEN

Appeal 2015-007359
Application 13/512,374
Technology Center 3700

Before JENNIFER D. BAHR, LINDA E. HORNER, and
BRANDON J. WARNER, *Administrative Patent Judges*.

WARNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Peter Weigand et al. (“Appellants”)¹ appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 6–8 and 10–13. *See* Appeal Br. 2. Claims 1–5 and 9 have been canceled. *See id.* at 12, Claims App. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to Appellants, the real party in interest is Air Liquide Global E&C Solutions Germany. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Appellants' disclosed invention "relates to a port arrangement for access to a demountable component located in the interior of an apparatus or container." Spec. ¶ 2.² Claim 6, reproduced below, is the sole independent claim and is representative of the subject matter on appeal.

6. A port arrangement for accessing a demountable component in an interior of an apparatus or container, the port arrangement comprising:

an inner port including a port tube and forming a non-integral, releasable connection with an internal component, the releasable connection being pretensioned so as to provide a pressing force which presses the port tube toward and against the internal component; and

an outer port connected with an outer jacket, the port tube of the inner port being received through the outer port.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims on appeal:

Laskaris	US 4,526,015	July 2, 1985
Theissen	US 4,705,189	Nov. 10, 1987
Chevalier	US 4,790,290	Dec. 13, 1988

² We note that references herein to Appellants' Specification refer to the Substitute Specification filed May 29, 2012.

REJECTIONS

The following rejections are before us for review:

- I. Claims 6–8 and 10–13 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Non-Final Act. 4.
- II. Claims 6, 7, and 13 stand rejected under 35 U.S.C. § 102(b) as anticipated by Laskaris. *Id.* at 4–5.
- III. Claims 6 and 12 stand rejected under 35 U.S.C. § 102(b) as anticipated by Chevalier. *Id.* at 5–6.
- IV. Claims 8 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Laskaris. *Id.* at 6–7.
- V. Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Laskaris and Theissen. *Id.* at 7.

ANALYSIS

Rejection I—Claims 6–8 and 10–13 as failing to comply with the written description requirement

The stated basis for the Examiner’s rejection under 35 U.S.C. § 112, first paragraph, is that Appellants’ Specification provides insufficient written description support for a releasable connection that is “non-integral,” as recited in claim 6. *See* Non-Final Act. 4. The Examiner explained that, “as the connection is joining two separate pieces[,] it would be considered integral.” *Id.* According to the Examiner, “the threaded connection or the press fit connection that is provided for in the [S]pecification of the present invention would appear to be a type of fixed together connection, thus making the connection integral.” Ans. 2.

Appellants argue that “[i]t is well known that a connection which is made to be in one piece, such as by being a molded connection or a welded or brazed connection, and which must be cut or otherwise severed to be disconnected, is an integral connection.” Appeal Br. 4. In contrast, Appellants point to Figures 2–5 of the Specification and assert that “sealing elements 21, 31, 41, 51 in these embodiments [are] merely pressed against and abut the inner jackets 22, 32, 42, 52 and therefore do not form an [*sic*] integral connections therewith, i.e., the connections are non-integral.” *Id.* at 4–5; *see* Spec. ¶¶ 7, 14, 17. Thus, according to Appellants, one of ordinary skill in the art “would understand the meaning of ‘non-integral’ in light of the intrinsic record of the present application to mean that the recited connection is not a one-piece construction and does not include welded or brazed connections which form a one-piece construction and integrally connect the material of the two parts.” Reply Br. 2.

We agree with Appellants that the Specification provides support for the limitation in question sufficient to satisfy the written description requirement of 35 U.S.C. § 112, first paragraph. Namely, the embodiments depicted in Figures 2–5, as well as the corresponding description of these embodiments provided in the Specification, would reasonably convey to one having ordinary skill in the art that Appellants had possession of a port arrangement that includes a “non-integral,” releasable connection. *See Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). Accordingly, we do not sustain the rejection of claim 6, and of claims 7, 8, and 10–13 depending therefrom, under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Rejection II – Claims 6, 7, and 13 as anticipated by Laskaris

Independent claim 6 recites, in relevant part, a port arrangement having “an inner port including a port tube and forming a non-integral, *releasable* connection with an internal component.” Appeal Br. 12, Claims App. (emphasis added). Appellants argue that “the connection of Laskaris is a brazed connection, which is not a releasable connection.” Appeal Br. 5 (citing Laskaris, col. 3, ll. 34–35). We agree.

In rejecting claim 6 as anticipated by Laskaris, the Examiner found that “Laskaris specifically teaches [that] the port is brazed to the inner wall, and[,] as is well known in the art[,] a brazing connection can be disconnected and rebrazed.” Non-Final Act. 5; *see* Laskaris, col. 3, ll. 34–35. Although Laskaris discloses a brazed connection between the port tube and the internal component, Appellants persuasively assert that a “releasable connection, as this term would be understood in light of the [S]pecification, excludes connections which would need to be cut-off or reheated and severed,” in order to be released. Appeal Br. 5.

In particular, Appellants’ Specification describes “a port arrangement in which the port connected with the internal component can easily be separated from the same.” Spec. ¶ 14. For example, the Specification describes an exemplary embodiment of a port arrangement in which “the sealing element of the releasable connection consists of cones inserted into each other, and the force for pressing the parts of the sealing element into each other is generated by pretensioning an expansion compensator integrated in the tube of the inner or outer port.” *Id.* ¶ 17; *see also id.* ¶ 18 (describing another exemplary embodiment in which “the sealing element of the releasable connection consists of one hemisphere and one shell half

inserted into each other”). The Specification also expressly distinguishes a releasable connection from prior art port arrangements that “must be cut off from the component to be removed,” and explains that “[s]uch cutting off, and also the subsequent reattachment of the port arrangement, requires a great effort.” *Id.* ¶ 7.

We agree with Appellants that, in view of the Specification, “the term ‘releasable connection’ . . . means a connection which can be easily separated and excludes welded or brazed connections which require a great effort and material destruction to remove.” Reply Br. 3. As Appellants explain, the Examiner’s construction of “releasable connection” used in the rejection essentially does “not afford[] any weight to the term ‘releasable’ because any connection could be removed through the application of heat and/or material destruction.” Appeal Br. 5–6. In other words, to the extent that the Examiner is correct in that it is possible to release the brazed connection of Laskaris by applying sufficient heat, such a connection is not one that can be easily separated and reconnected without material destruction. Thus, the Examiner has not established by a preponderance of the evidence that Laskaris discloses “an inner port including a port tube and forming a non-integral, releasable connection with an internal component,” as recited in claim 6.

Accordingly, based on the record before us—because an anticipation rejection requires a finding in a single reference of each and every limitation as set forth in the claims—we do not sustain the rejection of independent claim 6, and of dependent claims 7 and 13, as anticipated by Laskaris.

Rejection III – Claims 6 and 12 as anticipated by Chevalier

Independent claim 6 recites, in relevant part, a port arrangement having a releasable connection that is “pretensioned so as to provide a pressing force which *presses the port tube toward and against the internal component.*” Appeal Br. 12, Claims App. (emphasis added). Appellants argue that Chevalier fails to disclose a releasable connection that is pretensioned so as to press, as claimed. *See id.* at 8–9. We agree.

With regard to the above claimed feature, the Examiner found that, “as [Chevalier’s] resilient pad 11 is compressed (pretensioned)[,] the force from the pad trying to restore its shape against the collar 13 and set screw 14, the inner port 8 presses outward creating a pressing force between spud 4 and the inner port 8.” Non-Final Act. 6; *see* Chevalier, col. 3, ll. 52–61. The Examiner explains that “resilient member 11 pushes against the collar 13, therefore pulling the inner port 8 away from the internal component,” and “[t]he remaining forces taking place in this configuration in order to keep it in static equilibrium would be an opposite force taking place at the threads in order to keep the inner port in place.” Ans. 4–5. However, Appellants persuasively assert that, “[e]ven assuming that the resilient pad 11 trying to restore its shape would cause a force on the rod 8, such a force would be in an opposite direction extending away from the spud 4, or internal component, and therefore not toward the spud 4, or internal component.” Appeal Br. 8 (citation omitted).

In particular, Chevalier discloses that “[s]et screw 14 is . . . turned down to lock the pad 11 and backing disc 12,” and that “[f]urther threading of rod 8 in spud 4 will then compress pad 11 to seal the space between opening 7 and rod 8.” Chevalier, col. 3, ll. 57–61 (boldface omitted). The

Examiner's explanation on pages 4 and 5 of the Answer does not establish that compressing Chevalier's pad 11 would provide a force that presses rod 8 *toward* spud 4 (i.e., the internal component). To the extent that compressing Chevalier's pad 11 will provide some force against rod 8, we agree with Appellants that "the pretensioning . . . is in a direction *away* from the internal component, not *toward* the internal component." Reply Br. 5. Thus, the Examiner has not established by a preponderance of the evidence that Chevalier discloses that the releasable connection is "pretensioned so as to provide a pressing force which presses the port tube *toward and against* the internal component," as claimed.

Accordingly, based on the record before us—because an anticipation rejection requires a finding in a single reference of each and every limitation as set forth in the claims—we do not sustain the rejection of independent claim 6, and of dependent claim 12, as anticipated by Chevalier.

*Rejections IV and V—Claims 8, 10, and 11 as
unpatentable over Laskaris alone or in combination with Theissen*

Regarding Rejections IV and V, we note that these rejections are premised on the same purported disclosure from Laskaris discussed above for Rejection II, and that the Examiner relied on Theissen in Rejection V for teaching additional features, but not to cure the aforementioned deficiency of Laskaris. Non-Final Act. 6–7. Consequently, we also do not sustain the rejections of claims 8 and 11 as being unpatentable over Laskaris, or of claim 10 as being unpatentable over Laskaris and Theissen.

Appeal 2015-007359
Application 13/512,374

DECISION

We REVERSE the Examiner's rejections of claims 6–8 and 10–13.

REVERSED